Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Message Text

PAGE 01 STATE 142000

47
ORIGIN L-02

INFO OCT-01 ISO-00 DLOS-02 /005 R

66623
DRAFTED BY:L:OES:RJBETTAUER
APPROVED BY:L:OES:RJBETTAUER
D:LOS:MR. HULL
L:MR. SCHWEBEL
---------- 119467
R 030035Z JUL 74
FM SECSTATE WASHDC
INFO AMEMBASSY CARACAS 0000

C O N F I D E N T I A L STATE 142000

FOR USDEL TO LOS CONFERENCE

FOLLOWING TELEGRAM FROM SECSTATE WASHDC DATED JULY 1, 1974
SENT GENEVA, USUN NEW YORK, MEXICO IS REPEATED TO YOU: QUOTE

C O N F I D E N T I A L STATE 142000

E.O. 11652: GOS
TAGS: UNCTAD, EGEN
SUBJECT: UNCTAD CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES

REFS: (A) MEXICO 5297 (B) MEXICO 5255

1. SUMMARY: REPORT FOLLOWS ON CLOSING DAYS OF MEXICO UNCTAD WORKING GROUP SESSION FROM TIME OF ARRIVAL JUNE 26 OF CARLYLE MAW. ATMOSPHERE OF SESSION WAS TRANSFORMED BY AGREEMENT REACHED BETWEEN MEXICAN FONSEC RABASA AND MAW ON KEY ISSUES OF NATIONALIZATION AND MNCS WHICH MEXICO AGREED TO BACK BEHIND-THE-SCENES. ITS INTRODUCTION BY BRILLANTES (PHILIPPINES) AND SUBSTANTIAL ACCEPTANCE BY DEVELOPED COUNTRIES LED TO OPEN SPLIT AMONG GROUP OF 77, WITH RESULT THAT DEVELOPED COUNTRIES PRESSED FOR AGREEMENT ON CHARTER AS A WHOLE WHILE 77 MAINTAINED THAT TIME WAS CONFIDENTIAL

PAGE 02 STATE 142000

LACKING TO COMPLETE WORK. SESSION ENDED IN STATE OF HARMONIOUS FATIGUE, IT BEING AGREED THAT CONSULTATIONS WILL TAKE PLACE IN GENEVA FIRST WEEK SEPTEMBER, IN HOPE THAT AGREEMENT THEN MAY BE REACHED, TO BE TRANSMITTED TO

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

UNCTAD BOARD THEN IN SESSION, WHICH WOULD COMPLETE THE CHARTER'S DRAFT IN ACCORDANCE WITH TERMS OF SUCH AN AGREEMENT AND TRANSMIT IT TO UNGA.

2. AT INITIAL SESSION WITH RABASA, MAW STATED USG SEEKS AGREEMENT IN MEXICO ON A COMPLETE DRAFT CHARTER. CONSIDERATION OF A DRAFT CHARTER BY UNGA CONTAINING DISAGREED OR ALTERNATIVE TEXTS WOULD BE IN INTERESTS NEITHER OF MEXICO NOR USG. MAW PRESENTED A COMPROMISE PACKAGE. PROVISIONS ON PRODUCERS CARTELS, COMMODITY AGREEMENTS, LAW OF SEA AND ENVIRONMENT WOULD BE OMITTED ALTOGETHER FROM CHARTER. SINCE EC HAD NOW INDICATED SUBSTANTIAL AGREEMENT ON BRILLANTES FORMULA FOR DEALING WITH MFN AND NON-DISCRIMINATION, IT WAS UP TO MEXICO AND GROUP OF 77 TO PERSUADE USSR TO MATCH EC COMPROMISE (REFTEL (A)). ON THE NATIONALIZATION-MNC COMPLEX OF ISSUES, MAW GAVE RABASA THE TEXT ON LINES OF THAT WHICH AUSTRALIAN AND CANADIAN DELS HAD PASSED CASTANEDA A WEEK BEFORE (IN TURN BASED ON USDEL DRAFT; REFTEL (B)).

3. RABASA REPLIED THAT A KEY PROBLEM FOR UNCTAD CHARTER AS RESOLUTIONS ADOPTED BY SIXTH SPECIAL SESSION UNGA. WHILE INITIALLY ECHEVERRIA AND HE HAD CELEBRATED THOSE RESOLUTIONS' POSITIVE REFERENCE TO CHARTER, THEY HAD COME TO REALIZE THESE RESOLUTIONS CONSTITUTED GRAVE DIFFICULTY FOR IT, BECAUSE MANY LDCS NOW WERE UNWILLING TO ACCEPT LESS THAN THOSE RESOLUTIONS CONTAINED ON ISSUES LIKE NATIONALIZATION. RABASA INDICATED THINGS WOULD BE EASIER IF USG HAD VOTED AGAINST THE RESOLUTIONS. HE COMPLAINED ALSO OF WHAT HE UNDERSTOOD WAS USDEL'S "PUGNACIOUS AND INTRANSIGENT" APPROACH IN MEXICO. NEVERTHELESS, HE WELCOMED MAW'S PACKAGE, AGREED ON ALL ELEMENTS OF IT EXCEPT NATIONALIZATION AND MNCS, AND REMITTED LATTER TO NEGOTIATION WITH CASTANEDA AND GONZALEZ GALVEZ. FOLLOWING TEXT THEN WAS HAMMERED OUT AND APPROVED BY RABASA AND MAW JUNE 27. BEGIN TEXT:

CONFIDENTIAL

"EVERY STATE HAS PERMANENT SOVEREIGNTY OVER ITS NATURAL WEALTH AND RESOURCES AND HAS THE INALIENABLE RIGHT FULLY AND FREELY TO DISPOSE OF THEM. EACH STATE HAS THE RIGHT:

(A) TO ENACT LEGISLATION AND PROMULGATE RULES AND REGULATIONS, CONSISTENT WITH ITS DEVELOPMENT OBJECTIVES, TO GOVERN THE ENTRY AND ACTIVITIES WITHIN ITS TERRITORY OF FOREIGN ENTERPRISES;

(B) TO FREELY ENTER INTO UNDERTAKINGS RELATING TO THE IMPORT OF FOREIGN CAPITAL WHICH SHALL BE OBSERVED IN GOOD FAITH;

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

(C) TO REGULATE AND SUPERVISE THE ACTIVITIES OF TRANS-
NATIONAL CORPORATIONS WITHIN ITS NATIONAL JURISDICTION
AND TAKE MEASURES TO ENSURE THAT SUCH ACTIVITIES

COMPLY FULLY WITH ITS LAWS, RULES AND REGULATIONS AND
CONFORM WITH ITS ECONOMIC AND SOCIAL POLICIES. TRANS-
NATIONAL CORPORATIONS SHALL NOT INTERVENE IN THE INTERNAL
AFFAIRS OF A HOST STATE. EVERY STATE SHOULD, WITH
FULL REGARD FOR ITS SOVEREIGN RIGHTS, CO-OPERATE WITH
OTHER STATES IN THE APPLICATION OF RELEVANT LAWS,
RULES AND REGULATIONS;

(D) TO NATIONALIZE, EXPROPRIATE OR REQUISITION PROPERTY,
PROVIDED THAT IN THE CASE OF FOREIGN PROPERTY JUST
COMPENSATION SHALL BE PAID IN THE LIGHT OF ALL RELEVANT
CIRCUMSTANCES;

(E) TO REQUIRE THAT RECOURSE BE HAD TO ITS NATIONAL
JURISDICTION IN ANY CASE WHERE THE TREATMENT OF FOREIGN
INVESTMENT OR COMPENSATION THEREFOR IS IN CONTROVERSY,
UNLESS OTHERWISE AGREED BY THE PARTIES;

(F) TO SETTLE DISPUTES WHERE SO AGREED BY THE PARTIES
CONCERNED THROUGH NEGOTIATION, GOOD OFFICES, INQUIRY,
FACT-FINDING, CONCILIATION, MEDIATION, ARBITRATION OR
INTERNATIONAL ADJUDICATION ON THE BASIS OF THE PRINCIPLES
OF SOVEREIGN EQUALITY OF STATES AND FREE CHOICE OF MEANS.

CONFIDENTIAL

PAGE 04 STATE 142000

STATES TAKING MEASURES IN THE EXERCISE OF THIS RIGHT
SHALL FULFIL IN GOOD FAITH THEIR INTERNATIONAL OBLIGATIONS.
UNQUOTE. END OF TEXT.

4. AT INSTANCE OF USDEL AND UKDEL, AND IN CONCERT WITH
CASTANEDA, TEECE, AUSTRALIAN CHAIRMAN OF ONE OF WORKING
GROUP'S NEGOTIATING GROUPS, MET WITH CHAIRMEN OF OTHER
THREE GROUPS (BRILLANTES, MULIRO OF KENYA, AND CASTANEDA).
HE PERSUADED BRILLANTES TO PUT FORTH TEXT SET OUT PARA 3
THIS MESSAGE, NOT REVEALING FACT THAT MEXICO AND USG
HAD AGREED UPON IT. BRILLANTES SO AGREED, RESERVING
RIGHT TO AMEND IT. IN FACT, WHEN HE INTRODUCED IT AT
2:00 A.M. JUNE 28, BRILLANTES SUBSTITUTED "COMMITMENTS OR
UNDERTAKINGS" FOR "OBLIGATIONS".

5. GROUP OF 77 WAS THROWN INTO DISARRAY BY BRILLANTES
PROPOSAL. GROUP OF 77 APPARENTLY DECIDED TO STALL,
TAKING LINE WHEN WORKING GROUP RECONVENED LATER JUNE 28
THAT THERE WAS INSUFFICIENT TIME TO RECEIVE THE FRESH
INSTRUCTIONS NECESSARY FOR DEALING WITH BRILLANTES
FORMULA. GROUP B COUNTRIES ACCEPTED IT AS PROMISING
BASIS FOR NEGOTIATION WHICH SHOULD LEAD TO AGREED

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

SOLUTION. FYI. GROUP B ENTHUSIASTIC ABOUT BRILLANTES

TEXT, EXCEPT FOR CHANGE OF "OBLIGATIONS" TO "COMMITMENTS OR UNDERTAKINGS". ALL EXCEPT UKDEL WERE OF VIEW LATTER PHRASE UNACCEPTABLE, SINCE IT INFERRED THAT ONLY TREATIES, AND NOT CUSTOMARY INTERNATIONAL LAW AS WELL, APPLIED. UKDEL BELIEVED IT COULD BE ARGUED THAT "COMMITMENTS" MEANT COMMITMENTS TO OBSERVE CUSTOMARY INTERNATIONAL LAW. END FYI.

6. SINCE IT BECAME PLAIN THAT GROUP OF 77 UNWILLING TO CARRY ON NEGOTIATIONS IN MEXICO ON NATIONALIZATION-MNCS, IMPETUS TOWARDS AGREEMENT ON OTHER ISSUES PETERED OUT. ALL-NIGHT SESSION ENDING 7:00 A.M. JUNE 29 CATALOGUED POINTS OF DISAGREEMENT. USSR AFTER APPARENT EQUIVOCATION DID NOT ACCEPT THE BRILLANTES COMPROMISE ON MFN-NON-DISCRIMINATION. PROPOSALS ON PRODUCER CARTELS, OCCUPIED TERRITORIES, COMMODITY AGREEMENTS, INTER-DEPENDENCE, LOS, AND ENVIRONMENT WERE ADVANCED OR CONFIDENTIAL

MAINTAINED AND WILL APPEAR AS DISAGREED IN DRAFT CHARTER. EVEN AGREEMENT ON A TRANSITIONAL AND CONCLUDING PARAS WAS ELUSIVE. MEXICANS ALSO PRESSED HARD FOR PARA PROVIDING FOR PERIODIC REVIEW AND REVISION OF CHARTER, WHICH USDEL RESISTED AS PREMATURE UNTIL CONTENT OF CHARTER AGREED. MOREOVER, VARIOUS DELS STAKED OUT THEIR ORIGINAL PROPOSALS. GROUP B RESPONDED IN KIND. ON NATIONALIZATION, EC-9 REINTRODUCED TEXT, "ALTERNATIVE 4", FOUND PP. 15-16 OF MARCH 8 REPORT OF WG, TD/B/AC.12/3. U.S., EC AND JAPAN JOINTLY INTRODUCED TEXT BELOW ON MNCS. BEGIN TEXT:

"EVERY STATE HAS THE RIGHT TO REGULATE AND SUPERVISE THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS WITHIN ITS JURISDICTION BY TAKING MEASURES TO ENSURE THAT SUCH CORPORATIONS COMPLY FULLY WITH ITS LAWS, RULES AND REGULATIONS. IN EXERCISING THIS RIGHT, EVERY STATE SHALL TREAT TRANSNATIONAL CORPORATIONS EQUITABLY AND IN A NON-DISCRIMINATORY FASHION AND OTHERWISE OBSERVE APPLICABLE INTERNATIONAL OBLIGATIONS. TRANSNATIONAL CORPORATIONS SHALL RESPECT THE SOVEREIGNTY AND LAWS OF THE COUNTRIES IN WHICH THEY OPERATE, REFRAINING FROM ANY INTERNVENTION IN THEIR INTERNAL AFFAIRS.

STATES SHALL CO-OPERATE IN GOOD FAITH TO RESOLVE CON-FLICTS OF JURISDICTION IN THE APPLICATION OF THEIR LAW TO TRANSNATIONAL CORPORATIONS, DUE REGARD BEING PAID TO APPLICABLE INTERNATIONAL OBLIGATIONS AND TO THE INTERESTS OF EACH COUNTRY CONCERNED. UNQUOTE. END TEXT.

7. CASTANEDA, HAVING CONSULTED THE VARIOUS GROUPS,

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

ANNOUNCED THAT IT WAS AGREED THAT CONSULTATIONS WOULD TAKE PLACE ON HIS INITIATIVE IN GENEVA THE FIRST WEEK OF SEPTEMBER, TO WHICH ALL MEMBERS OF WG WISHING TO TAKE PART WOULD BE INVITED. UNCTAD BOARD WOULD THEN BE IN SESSION, AND IT WAS CHARGED WITH ELABORATING TEXT OF CHARTER. IF IN THESE CONSULTATIONS AGREEMENT WERE REACHED ON A COMPLETE DRAFT CHARTER, UNCTAD BOARD COULD REVISE THE MEXICO DRAFT ACCORDINGLY AND TRANSMIT THAT REVISION TO UNGA.

CONFIDENTIAL

PAGE 06 STATE 142000

8. PUBLICLY, MEXICO TOOK CARE NOT TO BE ASSOCIATED WITH BRILLANTES PROPOSAL. FACT OF NEGOTIATION OF ITS SUBSTANCE BETWEEN MEXICO AND USG REMAINS CONFIDENTIAL. NEVERTHELESS, RABASA IS COMMITTED TO MAW TO LEND MEXICO'S INFLUENCE TOWARDS ITS ADOPTION AS BASIS OF AGREEMENT ON CHARTER. DEVELOPED COUNTRIES WILL REQUIRE REVISION OR PERHAPS SIMPLY DELETION OF LAST SENTENCE OF BRILLANTES TEXT. GROUP OF 77 WILL DOUBTLESS SEEK MORE. IT IS UNCERTAIN WHETHER IN FACT AGREEMENT CAN BE REACHED IN GENEVA ON LINES OF BRILLANTES TEXT. IN ANY EVENT, ITS PROPOSAL BY LEADING SPOKESMAN OF GROUP OF 77, EVEN IF ACTING IN A PERSONAL CAPACITY, BROUGHT INTO THE OPEN A WELL-CONCEALED SPLIT BETWEEN LDC MODERATES AND EXTREMISTS, TRANSFORMED THE ATMOSPHERE OF THE SESSION, AND ENABLED THE USG TO ESCAPE WITH HARDLY A WORD OF CRITICISM FROM LDCS IN FINAL DAYS. FAR FROM BEING ABLE TO BLAME DEVELOPED COUNTRIES FOR FAILURE TO COMPLETE THE CHARTER, IT TURNED OUT TO BE THE GROUP OF 77 THAT WAS UNWILLING TO NEGOTIATE. THE AGREEMENT ON 75 OF CHARTER IS IN CONSTRUCTIVE TERMS THAT DO NOT PREJUDICE INTERESTS OF DEVELOPED COUNTRIES AND, ON DISAGREED POINTS, WESTERN POSITIONS HAVE BEEN FULLY PRESERVED.

9. IN STATEMENT TO PRESS AFTER SESSION'S CONCLUSION, RABASA CRITICIZED USG, AS HE HAD INFORMED MAW HE INEVITABLY WOULD BE OBLIGED TO DO. BUT CRITICISM WAS MILD; IT ACKNOWLEDGED USG'S FLEXIBILITY AND SAID STILL MORE U.S. FLEXIBILITY WOULD BE REQUIRED TO PRODUCE FULL AGREEMENT. SISCO UNQUOTE SISCO

CONFIDENTIAL

<< END OF DOCUMENT >>

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Message Attributes

Automatic Decaptioning: X
Capture Date: 27 JUL 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: SOVEREIGNTY, INTERNATIONAL ORGANIZATIONS, MEETING REPORTS, COMMITTEE MEETINGS
Control Number: n/a
Copy: SINGLE
Draft Date: 03 JUL 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: shawdg
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE142000
Document Source: ADS
Document Unique ID: 00
Drafter:
Enclosure: n/a
Executive Order: 11652 GOS
Errors: n/a
Film Number: D740176-0818
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740789/abbryzpp.tel
Line Count: 263
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Office: ORIGIN L
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: (A) MEXICO 5297 (B) MEXICO 5255
Review Action: RELEASED, APPROVED
Review Authority: shawdg
Review Comment: n/a
Review Content Flags:
Review Date: 18 JUN 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <18 JUN 2002 by boyleja>; APPROVED <19 FEB 2003 by shawdg>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: UNCTAD CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES
TAGS: EGEN, UNCTAD
To: n/a INFO CARACAS
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005